



House of Representatives

General Assembly

File No. 732

January Session, 2009

Substitute House Bill No. 6581

House of Representatives, April 20, 2009

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 21a-267 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) No person shall use or possess with intent to use drug
4 paraphernalia, as defined in subdivision (20) of section 21a-240, to
5 plant, propagate, cultivate, grow, harvest, manufacture, compound,
6 convert, produce, process, prepare, test, analyze, pack, repack, store,
7 contain or conceal, or to ingest, inhale or otherwise introduce into the
8 human body, any controlled substance as defined in subdivision (9) of
9 section 21a-240. Any person who violates any provision of this
10 subsection shall be guilty of a class C misdemeanor.

11 (b) No person shall deliver, possess with intent to deliver or
12 manufacture with intent to deliver drug paraphernalia knowing, or

13 under circumstances where one reasonably should know, that it will
14 be used to plant, propagate, cultivate, grow, harvest, manufacture,
15 compound, convert, produce, process, prepare, test, analyze, pack,
16 repack, store, contain or conceal, or to ingest, inhale or otherwise
17 introduce into the human body, any controlled substance. Any person
18 who violates any provision of this subsection shall be guilty of a class
19 A misdemeanor.

20 (c) Any person who violates subsection (a) or (b) of this section in or
21 on, or within [one thousand five hundred feet] two hundred feet of the
22 perimeter of, the real property comprising a public or private
23 elementary or secondary school during regular school hours or the
24 hours of any school-sponsored activity conducted on such property
25 where students are present and who is not enrolled as a student in
26 such school shall be imprisoned for a term of one year, which [shall not
27 be suspended and] shall be in addition and consecutive to any term of
28 imprisonment imposed for violation of subsection (a) or (b) of this
29 section.

30 Sec. 2. Section 21a-278a of the general statutes is repealed and the
31 following is substituted in lieu thereof (*Effective October 1, 2009*):

32 (a) Any person eighteen years of age or older who violates section
33 21a-277 or 21a-278, and who is not, at the time of such action, a drug-
34 dependent person, by distributing, selling, prescribing, dispensing,
35 offering, giving or administering any controlled substance to another
36 person who is under eighteen years of age and is at least two years
37 younger than such person who is in violation of section 21a-277 or 21a-
38 278, shall be imprisoned for a term of two years, which shall not be
39 suspended and shall be in addition and consecutive to any term of
40 imprisonment imposed for violation of section 21a-277 or 21a-278.

41 (b) Any person who violates section 21a-277 or 21a-278 by
42 manufacturing, distributing, selling, prescribing, dispensing,
43 compounding, transporting with the intent to sell or dispense,
44 possessing with the intent to sell or dispense, offering, giving or
45 administering to another person any controlled substance in or on, or

46 within [one thousand five hundred feet] two hundred feet of the
47 perimeter of, the real property comprising (1) a public or private
48 elementary or secondary school during regular school hours or the
49 hours of any school-sponsored activity conducted on such property
50 where students are present, (2) a public housing project, or (3) a
51 licensed child day care center, as defined in section 19a-77, [that]
52 during the operating hours of such center, which center is identified as
53 a child day care center by a sign posted in a conspicuous place, shall be
54 imprisoned for a term of three years, which [shall not be suspended
55 and] shall be in addition and consecutive to any term of imprisonment
56 imposed for violation of section 21a-277 or 21a-278. To constitute a
57 violation of this subsection, an act of transporting or possessing a
58 controlled substance shall be with intent to sell or dispense in or on, or
59 within [one thousand five hundred feet] two hundred feet of the
60 perimeter of, the real property comprising a public or private
61 elementary or secondary school during regular school hours or the
62 hours of any school-sponsored activity conducted on such property
63 where students are present, a public housing project or a licensed child
64 day care center, as defined in section 19a-77, [that] during the
65 operating hours of such center, which center is identified as a child day
66 care center by a sign posted in a conspicuous place. For the purposes
67 of this subsection, "public housing project" means dwelling
68 accommodations operated as a state or federally subsidized
69 multifamily housing project by a housing authority, nonprofit
70 corporation or municipal developer, as defined in section 8-39,
71 pursuant to chapter 128 or by the Connecticut Housing Authority
72 pursuant to chapter 129.

73 (c) Any person who employs, hires, uses, persuades, induces,
74 entices or coerces a person under eighteen years of age to violate
75 section 21a-277 or 21a-278 shall be imprisoned for a term of three
76 years, which shall not be suspended and shall be in addition and
77 consecutive to any term of imprisonment imposed for violation of
78 section 21a-277 or 21a-278.

79 Sec. 3. Section 21a-279 of the general statutes is repealed and the

80 following is substituted in lieu thereof (*Effective October 1, 2009*):

81 (a) Any person who possesses or has under his control any quantity
82 of any narcotic substance, except as authorized in this chapter, for a
83 first offense, may be imprisoned not more than seven years or be fined
84 not more than fifty thousand dollars, or be both fined and imprisoned;
85 and for a second offense, may be imprisoned not more than fifteen
86 years or be fined not more than one hundred thousand dollars, or be
87 both fined and imprisoned; and for any subsequent offense, may be
88 imprisoned not more than twenty-five years or be fined not more than
89 two hundred fifty thousand dollars, or be both fined and imprisoned.

90 (b) Any person who possesses or has under his control any quantity
91 of a hallucinogenic substance other than marijuana or four ounces or
92 more of a cannabis-type substance, except as authorized in this
93 chapter, for a first offense, may be imprisoned not more than five years
94 or be fined not more than two thousand dollars or be both fined and
95 imprisoned, and for a subsequent offense may be imprisoned not more
96 than ten years or be fined not more than five thousand dollars or be
97 both fined and imprisoned.

98 (c) Any person who possesses or has under his control any quantity
99 of any controlled substance other than a narcotic substance, or a
100 hallucinogenic substance other than marijuana or who possesses or has
101 under his control less than four ounces of a cannabis-type substance,
102 except as authorized in this chapter, for a first offense, may be fined
103 not more than one thousand dollars or be imprisoned not more than
104 one year, or be both fined and imprisoned; and for a subsequent
105 offense, may be fined not more than three thousand dollars or be
106 imprisoned not more than five years, or be both fined and imprisoned.

107 (d) Any person who violates subsection (a), (b) or (c) of this section
108 in or on, or within [one thousand five hundred feet] two hundred feet
109 of the perimeter of, the real property comprising (1) a public or private
110 elementary or secondary school during regular school hours or the
111 hours of any school-sponsored activity conducted on such property
112 where students are present and who is not enrolled as a student in

113 such school, or (2) a licensed child day care center, as defined in
 114 section 19a-77, [that] during the operating hours of such center, which
 115 center is identified as a child day care center by a sign posted in a
 116 conspicuous place, shall be imprisoned for a term of two years, which
 117 [shall not be suspended and] shall be in addition and consecutive to
 118 any term of imprisonment imposed for violation of subsection (a), (b)
 119 or (c) of this section.

120 (e) As an alternative to the sentences specified in subsections (a) and
 121 (b) and specified for a subsequent offense under subsection (c) of this
 122 section, the court may sentence the person to the custody of the
 123 Commissioner of Correction for an indeterminate term not to exceed
 124 three years or the maximum term specified for the offense, whichever
 125 is the lesser, and at any time within such indeterminate term and
 126 without regard to any other provision of law regarding minimum term
 127 of confinement, the Commissioner of Correction may release the
 128 convicted person so sentenced subject to such conditions as he may
 129 impose including, but not limited to, supervision by suitable authority.
 130 At any time during such indeterminate term, the Commissioner of
 131 Correction may revoke any such conditional release in his discretion
 132 for violation of the conditions imposed and return the convicted
 133 person to a correctional institution.

134 (f) To the extent that it is possible, medical treatment rather than
 135 criminal sanctions shall be afforded individuals who breathe, inhale,
 136 sniff or drink the volatile substances defined in subdivision (49) of
 137 section 21a-240.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2009	21a-267
Sec. 2	October 1, 2009	21a-278a
Sec. 3	October 1, 2009	21a-279

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Judicial Dept.	GF - Potential Revenue Loss	Less than \$1,000	Less than \$1,000
Judicial Dpt (Probation); Correction, Dept.	GF - Savings	Significant	Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill limits the reach of penalty enhancements for any person convicted of illegal drug activities near schools, day care centers and public housing projects.¹ It also eliminates the mandatory minimum prison sentences for any person convicted of possessing or delivering drugs. Each year, approximately 6,000 charges are filed for violations of these drug laws, resulting in approximately 40 convictions under them which carry mandatory minimum prison sentences.

Significant annual state savings would be generated under the bill from: (1) elimination of the mandatory minimum prison sentences; and (2) reducing the maximum criminal penalties to which offenders are exposed thereby potentially lowering the criminal penalties that are ultimately imposed subsequent to plea bargaining. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender. Since criminal fines are seldom imposed, any revenue loss under the bill is

¹ The bill reduces (from 1,500 to 200) the distance from the facilities listed that subjects any person who commits drug offenses to stiffer criminal penalties; in addition, it reduces the applicability of these penalty enhancements to the time

anticipated to be minimal.

The Out Years

The annualized ongoing savings identified above would continue into the future subject to inflation; the annualized ongoing revenue loss from criminal fines would remain constant since fine amounts are set by statute.

Sources: Judicial Department Criminal/Motor Vehicle Statute Files

periods during which the facilities are operating (e.g., during regular school hours instead of 24/7).

OLR Bill Analysis**sHB 6581*****AN ACT CONCERNING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.*****SUMMARY:**

This bill makes a number of changes to the laws that enhance the penalties for illegal drug activities near schools, day care centers, and public housing projects. Under current law, a mandatory sentence applies in addition and consecutive to any prison term imposed for the underlying crime as follows:

1. one year for possessing drug paraphernalia within 1,500 feet of property comprising a public or private elementary or secondary school when the perpetrator is not enrolled as a student there;
2. three years for selling illegal drugs within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign, (b) public or private elementary or secondary school, or (c) public housing project; and
3. two years for possessing illegal drugs within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign or (b) public or private elementary or secondary school when the perpetrator is not enrolled as a student there.

Under the bill, the prison sentence under these provisions remains a term that is in addition and consecutive to any prison term imposed for the underlying crime but the court can suspend all or a portion of it without meeting the criteria required by current law (see BACKGROUND). The bill also limits the scope of these provisions by:

1. reducing the size of the zones around the locations from 1,500 to 200 feet;
2. for schools, requiring the illegal activity to occur during regular school hours or hours of any school-sponsored activity conducted on the property where students are present; and
3. for day care centers, requiring the illegal activity to occur during the center's operating hours.

The bill specifies that the zones are measured from the perimeter of the property.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Departing From a Mandatory Minimum

Judges can impose less than the law's mandatory minimum sentence under these laws when no one was hurt during the crime and the defendant (1) did not use or attempt or threaten to use physical force; (2) was unarmed; and (3) did not use, threaten to use, or suggest that he had a deadly weapon (such as a gun or knife) or other instrument that could cause death or serious injury.

Defendants must show good cause and can invoke these provisions only once. Judges must state at sentencing hearings their reasons for (1) imposing the sentence and (2) departing from the mandatory minimum (CGS § 21a-283a).

Penalties for Illegal Drug Crimes

By law, the penalty for using or possessing with intent to use drug paraphernalia is a class C misdemeanor, punishable by up to three months in prison, a fine of up to \$500, or both. Delivering, possessing with intent to deliver, or manufacturing drug paraphernalia is a class A misdemeanor punishable by up to one year in prison, a fine of up to \$2,000, or both (CGS § 21a-267).

By law, selling, manufacturing, or distributing a hallucinogen (not

marijuana) or narcotic is punishable (1) for a first offense, by up to 15 years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 30 years, a fine of up to \$100,000, or both; and (3) for a subsequent offense, up to 30 years, a fine of up to \$250,000, or both. For marijuana and other controlled substances, the penalty is (1) for a first offense, up to seven years, a fine of up to \$25,000, or both and (2) for a subsequent offense, up to 15 years, a fine of up to \$100,000, or both (CGS § 21a-277).

By law, a non-drug dependent person selling, manufacturing, or distributing at least one ounce of heroin or methadone, one half ounce of cocaine or crack, or five milligrams of LSD is subject to five to 20 years in prison to life. For narcotics, hallucinogens, one kilogram or more of cannabis, or amphetamines, the penalty is (1) for a first offense five to 20 years and (2) for a subsequent offense, 10 to 25 years. There is an exception to the mandatory minimum sentence if the offender is under age 18 or had a significantly impaired mental capacity at the time (CGS § 21a-278).

By law, possession of narcotics is punishable (1) for a first offense, by up to seven years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 15 years, a fine of up to \$100,000, or both; (3) for subsequent offenses, up to 25 years, a fine of up to \$250,000, or both. Possession of a hallucinogen or four or more ounces of marijuana is punishable (1) for a first offense, by up to five years in prison, a fine of up to \$2,000, or both and (2) for a subsequent offense, by up to 10 years, a fine of up to \$5,000, or both. Possession of other controlled substances or less than four ounces of marijuana is punishable (1) for a first offense, by up to one year in prison, a fine of up to \$1,000, or both and (2) for a subsequent offense, up to five years, a fine of up to \$3,000, or both (CGS § 21a-279).

Related Bill

sSB 349, favorably reported by the Judiciary Committee, decriminalizes the illegal possession of less than one half ounce of marijuana by anyone age 18 or older by reducing the penalty to a

violation punishable by a \$250 fine.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 23 Nay 17 (04/01/2009)

OFA/OLR RACIAL AND ETHNIC IMPACT STATEMENT

sHB 6581

AN ACT CONCERNING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

Pursuant to PA 08-143 and Joint Rule 15(c)(2), a committee voted to require a racial and ethnic impact statement on this bill. Under the public act and rule, a committee can vote to require such a statement on a bill that would, if passed, increase or decrease the pretrial or sentenced population of state correctional facilities.

The following Racial and Ethnic Impact Statement is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.

This statement sets out demographic information on the state's general population and in the criminal justice population, within the limits of data currently available in Connecticut. We obtained data from the Department of Correction (DOC), Judicial Branch, and U.S. Census. The precision of direct comparisons between the data sources is limited because each agency defines demographic categories differently.

IMPACT STATEMENT

The bill makes a number of changes to the laws that enhance the penalties for drug activity near schools, day care centers, and public housing projects. It:

1. allows the prison term imposed under these laws to be suspended under any circumstances, and not just the limited

ones set by current law and

2. limits the scope of these laws by (a) reducing the size of the zones around the locations from 1,500 to 200 feet and (b) restricting the time of day when illegal activity occurring near schools and day care centers qualifies for the enhanced penalty.

The bill specifies that the zones are measured from the perimeter of the property.

The available data shows disparities between the demographics of the general population and the demographics of offenders incarcerated for the crimes affected by the bill. Based on the data, the proportion of black and Hispanic inmates for drug offenses in general and for the drug offenses directly affected by the bill is greater than their proportion of the general population (see BACKGROUND). The proportion of white inmates is lower than their proportion of the general population.

Because the bill (1) gives the court discretion to suspend the sentence enhancements, which could reduce the length of prison sentences for offenders convicted under these statutes and (2) reduces the scope of these laws, which could reduce the number of people sentenced to prison under them, it could reduce this disparity between the general population and the prison population. But the bill's impact is unclear because of the (1) small number of offenders currently incarcerated for these crimes and (2) lack of data on plea bargaining that is only available from police, prosecutor, and court case files.

DOC Statistics for Drug Crimes

Based on data provided by DOC, 3,649 offenders were incarcerated with a drug crime as their most serious offense on January 1, 2009. Of these offenders, 17 were incarcerated under the enhanced penalties affected by the bill (all of these involved possession of illegal drugs). Table 1 displays this data.

Table 1: Offenders Incarcerated With Drug Crimes as Their Most Serious Offense, January 1, 2009

	<i>Black</i>	<i>Hispanic</i>	<i>White</i>	<i>Asian</i>	<i>American Indian</i>
<i>All Drug Offenses</i>					
Sentenced (3,649 inmates)	54.78%	33.08%	11.67%	0.33%	0.13%
Unsentenced (608 inmates)	47.20%	29.61%	23.03%	0.0%	0.16%
<i>Drug Offenses Near Prohibited Places</i>					
Sentenced or Unsentenced (17 inmates)	29.41%	29.41%	41.18%	0.0%	0.0%

Judicial Branch Data for Drug Crimes

Based on Judicial Branch data, the courts disposed of 41,253 drug offenses in 2008. Of these, 5,999 were drug zone offenses affected by the bill. This amounts to 14.54% of all drug offenses.

For all drug offenses, 25.81% resulted in a conviction. For the drug zone offenses, 0.67% resulted in a conviction.

This data is based on charges and not individuals. Thus, an individual could have more than one charge at a time and could have more than one charge in the course of a year.

Judicial Branch data is based on arrest reports and, in most instances, arrest reports do not show “Hispanic” as a category. Because Judicial Branch data reported on Hispanics is incomplete, we do not include it as a separate category. It is also important to note that because most arrest reports do not have a category for Hispanics, people who would otherwise be counted as Hispanic are counted in other categories, which inflates the numbers in those categories.

Table 2: Drug Offenses Disposed by the Courts in 2008

	<i>White</i>	<i>Black</i>	<i>Other</i>
<i>Offenses</i>			
All Drug Offenses (41,253 offenses)	61.67%	33.26%	5.07%
Drug Offenses Near Prohibited Places (5,999 offenses)	47.32%	46.37%	6.30%
<i>Convictions</i>			
All Drug Offenses (10,646 offenses)	55.98%	38.95%	5.06%
Drug Offenses Near Prohibited Places (40 offenses)	35.00%	65.00%	0.0%

Maps of Zones

In the past, OLR created maps showing how drug zone laws affect specific towns (see OLR Reports 2001-R-0330 and 2005-R-0460 and Program Review and Investigations Committee report *Mandatory Minimum Sentences*, 2005). We were not able to update these maps to show the affect of the bill on individual towns within the time frame for producing this statement. We will produce maps for four towns, to show how the bill affects different types of towns in a soon-to-be completed OLR Report (2009-R-0184).

BACKGROUND

State and Prison Populations

According to U.S. Census estimates for July 1, 2007 (the most recent estimate available with data on race and ethnicity), Connecticut's total population is 3,502,309. The table below breaks down the state population by demographics, with Hispanics of any race counted as Hispanic and not included in any of the other demographic categories.

<i>U.S. Census Population Estimates for Connecticut, July 1, 2007</i>		
	<i>Population</i>	<i>Percent of Total</i>

		<i>Population</i>
White	2,604,349	74.36%
Hispanic	403,375	11.52%
Black or African American	327,250	9.34%
Asian	117,628	3.36%
American Indian and Alaska Native	8,178	.23%
Native Hawaiian and Other Pacific Islander	1,378	.04%
Two or More Races	40,151	1.15%
Total	3,502,309	100%

Using data provided by the DOC for January 1, 2009, the total sentenced prison population was 14,746 and the demographic composition of this population was:

- 28.68% white,
- 26.62% Hispanic,
- 44.10% black,
- 0.41% Asian, and
- 0.18% American Indian.

Also incarcerated is the unsentenced population that includes defendants held pretrial and convicted offenders awaiting sentencing. According to DOC, the unsentenced prison population on January 1, 2009 was 3,832 and the demographic composition of this population was:

- 32.72% white,
- 27.24% Hispanic,
- 39.35% black,
- 0.31% Asian, and
- 0.37% American Indian.

The chart below displays this Census and DOC prison population data.

